

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Civil No. 50-2011-CV-00029

Petitioner,

vs.

STIPULATION

Grabanski Grain LLC,

and

Platte River Insurance Company,

Respondents.

PSC Case No. GE-10-498

Petitioner North Dakota Public Service Commission ("Commission"), respondent Platte River Insurance Company ("Platte River Insurance"), and respondent Grabanski Grain LLC, (collectively referred to as the "parties") stipulate and agree as follows:

RECITALS

1. Petitioner Commission filed its "Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds" with the district court on February 28, 2011, commencing the above-captioned action. See Doc #s 1-5.
2. Respondent Platte River Insurance filed its "Response of Platte River Insurance Company to Public Service Commission's Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds" on March 14, 2011. See Docs # 10-11.
3. On March 16, 2011, the Court entered its Order stating that:
 1. That the Public Service Commission is hereby appointed to act as trustee of a trust fund to be established and administered in accordance with North Dakota Century Code Chapter 60-04.

2. That Grabanski Grain LLC and Platte River Insurance Company are proper parties to this action and are hereby joined as parties.

See Doc # 16.

AGREEMENT

The parties now agree as to this matter that:

1. The terms of the Court's Order, dated March 16, 2011, appointing the Commission to act as trustee of a trust fund to be established and administered in accordance with North Dakota Century Code Chapter 60-04 and joining Platte River Insurance Company as a party to this action shall remain in full force and effect.

2. The Public Service Commission has determined Grabanski Grain LLC to be insolvent, effective July 23, 2010, within the meaning of section 60-04-02 of the North Dakota Century Code.

3. Consideration by the Court of the Commission's request that Platte River Insurance be ordered to deposit the penal sum of its penal bond, or so much thereof as may be deemed necessary, into a trust account, is to be stayed by the Court subject to renewal of that request by the Commission.

4. The Court's stay of its consideration of the Commission's request for deposit of the penal sum of the bond shall not be construed as a waiver of the rights of any of the parties with respect to the determination of the matter.

5. The bond referred to in this matter is Platte River bond # 41134564 and that the effective dates of that bond are October 26, 2009 to November 2, 2010.

6. In accordance with the terms and conditions of this Stipulation it is appropriate that the Court enter an order as follows:

1. Subject to the receipt of further evidence in this matter it appears to the Court that Grabanski Grain LLC is insolvent within the meaning of North Dakota Century Code Chapter 60-04 and establishes the date of insolvency as July 23, 2010, the date that the first claim for collection of outstanding funds owed was filed.
2. The Court stays consideration of that portion of Public Service Commission's "Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds" that requests "the Court order Platte River Insurance Company, as surety, to deposit

the penal sum of the bond in the amount of \$340,000 in the trustee's trust account for payment of valid cash claims."

3. The Public Service Commission may renew its request by motion that Platte River Insurance be ordered to deposit the penal sum of its penal bond, or so much thereof as may be deemed necessary, into the trust account, through motion and notice of the motion to Platte River Insurance and Grabanski Grain LLC.
4. The Court's stay of its consideration of the Public Service Commission's request for deposit of the penal sum of the bond shall not be construed as a waiver of the rights of any of the parties with respect to the determination of the matter.

Dated this 18th day of July, 2011.


Susan Richter, Licensing Div. Director
North Dakota Public Service Commission

Dated this 18th day of July, 2011.


Mark Gruman
Special Assistant Attorney General
North Dakota Public Service Commission


Dated this 19th day of July, 2011.


Gary Horst
Platte River Insurance Company

Dated this 19th day of July, 2011.


Gordon W. Myerchin, Attorney for
Platte River Insurance Company

Dated this 19th day of July, 2011.


DeWayne Johnston
Attorney for Grabanski Grain LLC

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CERTIFICATE OF SERVICE

Civil No. 50-2011-CV-00029

I hereby certify that on July 19, 2011, the following documents: **STIPULATION and proposed ORDER APPROVING STIPULATION AND STAYING DEPOSIT OF BOND PROCEEDS** were filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to respondents, by and through their attorneys Gordon W. Myerchin and DeWayne A. Johnston.



Douglas B. Anderson
Assistant Attorney General